

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE                    )  
  )  
  v.            ) ID No. 9605001774  
  )  
GARRY "OTTO" GIBBS,                )  
  )  
  Defendant.        )

Submitted: June 15, 2011

Decided: August 4, 2011

ORDER

On Defendant's Motion for Appointment of Counsel

**DENIED**

Otto Gibbs, Howard R. Young Correctional Institute, Wilmington, Delaware, *Pro Se*

**JOHNSTON, J.**

On October 13, 1997, defendant Garry “Otto” Gibbs was sentenced to 20 years imprisonment after he was convicted by a jury of unlawful sexual intercourse in the second degree. In anticipation of defendant’s release from prison, the State filed a petition to have defendant registered as a Tier 3 sex offender.

On December 12, 2010, defendant filed a *pro se* motion to dismiss and/or bar the State from registering him as a Tier 3 sex offender. Defendant requested a continuance to obtain counsel. On December 20, 2010, following an evidentiary hearing, a Superior Court Commissioner denied defendant’s request for a continuance to obtain counsel and granted the State’s request to register defendant as a Tier 3 sex offender.

On February 28, 2011, defendant again filed a motion to dismiss and/or bar the State from registering him as a Tier 3 sex offender, arguing that the Commissioner’s ruling was unconstitutional. On March 8, 2011, the Court approved the Commissioner’s ruling and defendant was designated as a Tier 3 sex offender.

Defendant now files a *pro se* motion for postconviction relief and for appointment of counsel pursuant to Rule 61(e)(1) of the Superior Court Rules of Criminal Procedure.

The scope of Rule 61 governs “the procedure on the application by a person in custody or subject to future custody under a sentence of this court seeking to set aside a judgment of conviction or a sentence of death.”<sup>1</sup> However, defendant does not seek to set aside his October 1997 conviction and does not face the death penalty. Defendant’s only claims are: (1) that the Commissioner’s denial of defendant’s request for continuance to obtain counsel was in violation of his Sixth Amendment right to counsel; and (2) that requiring registration under 11 *Del. C.* § 4120(a) and (c) violates the double jeopardy clause and *ex post facto* clause of the Constitution. Thus, defendant’s claims are outside the scope of Rule 61, and defendant’s motion for appointment of counsel pursuant to Rule 61(e)(1) must be denied.

In addition, Rule 61(e)(1) states that “the court will appoint counsel for an indigent movant only in the exercise of discretion and for good cause shown, but not otherwise.”<sup>2</sup> Even if the Court assumes that the defendant’s motion falls within the scope of Rule 61, defendant has not raised any arguments, or otherwise established any grounds, showing “good cause” that warrants appointment of counsel at State expense.

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<sup>1</sup>*Super. Ct. Crim. R.* 61(a)(1).

<sup>2</sup>*Super. Ct. Crim. R.* 61(e)(1).

**THEREFORE**, Defendant's Motion for Appointment of Counsel pursuant to Rule 61(e)(1) is hereby **DENIED**.

**IT IS SO ORDERED.**

*/s/ Mary M. Johnston*  
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The Honorable Mary M. Johnston